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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/672,429	09/28/2000	Werner Zobel	655.00931	8171

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Wood Phillips Van Santen Clark & Mortimer  
500 West Madison Street Suite 3800  
Chicago, IL 60661

EXAMINER

FORD, JOHN K

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/672,429

Applicant(s)

Zobel et al.

Examiner

FORD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Applicant has incorporated a foreign document by reference on page 2, lines 4-6. There appears to be an error in the application number. Please fix it. Also a copy will be needed in response to this action. Finally, if there is "essential" subject matter in that document, a translation into English and a suitable amendment to bring it into this application will be required. See MPEP Sections on Incorporation by Reference. Foreign documents cannot generally be incorporated by reference.

The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

Applicant supplied DE 19724728 is so highly relevant as to demand translation to facilitate proper examination. Please provide one in response to this action. It is not seen to be any serious financial burden to procure one given the assets of Modine Corporation. The drawing for this document is extremely ambiguous. Since Messrs. Ehlers and Zobel were inventors of the DE 19724728 invention, and are inventors here, they are required to explain exactly how large length, width and thickness each of the four heat exchangers were in that document or in any prior art corresponding to it. Failure to answer or address these questions will result in a non-responsive amendment. This prior art is exceedingly close to what is claimed here and there is no room for ambiguity here. It appears to the examiner that the top heat exchanger is a charge air cooler <sup>in DE '728,</sup> It appears to be smaller in depth (in the direction of arrow 21) than heat exchanger 2 and 4. Is that true? Heat exchanger 3 also appears thicker than heat exchangers 2 and 4. Is that true? What is the exact shape of the front and rear panels in this document? Please have Messrs. Zobel and

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DE 728

Ehlers provide a cross-sectional sketch of this prior art (similar to what is shown in Figure 2 of applicant's drawing Figures) so that this prior art can be meaningfully compared to the current invention. The sketch is a requirement. Meaningful examination cannot proceed without it.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative,

under 35 U.S.C. 103(a) as obvious over DE 19724728.

At the present time the Examiner is <sup>unsworn</sup> ~~assure~~ what the differences are (if any) between the prior art and the claimed invention. Once the aforementioned requirements are complied with the Examiner will be in a position to explain what differences (if any) are deemed to be obvious variations.


Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 728 as applied to claims 1-9 above, and further in view of Ireland (3800866) or Bentz (3921603) or Hauser (4357914).

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Each of Ireland, Bentz or Hauser teach a *centrifugal* fan in this type of heat exchanger. To have replaced the fan in DE '728 with a radial fan (if that isn't shown or disclosed in DE '728) would have been obvious in view of any of these teachings because of its compact nature relative to an axial flow fan.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to John Ford at telephone number 308-2636.



**John K. Ford**  
**Primary Examiner**

J. FORD:th  
July 25, 2002